

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 2374 to 2376 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SOMAJI BHIKHAJI

Appearance:

MS NANDINI JOSHI for Appellants
MR NITIN M AMIN for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 11/10/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Admitted. Mr. Nitin M. Amin, learned counsel waives service of notice on behalf of the respondents in each appeal. At the joint request of learned advocates appearing for the parties, the appeals are taken-up for final hearing today.

These appeals which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated January 25, 2000, rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) at Mirzapur, in Land Acquisition Cases No.2024/96 to 2026/96. The Land Acquisition Officer had made common award on October 29, 1993 determining the amount of compensation payable to the claimants. The reference court by passing order below Exh.13 had consolidated all the reference cases with Land Reference Case No.2024/96, which was treated as main case and in which parties had led common evidence. As common questions of facts and law arise for our consideration in these appeals, we propose to dispose them of by this common judgment.

2. In view of the proposal made by the Executive Engineer, Narmada Project, Kadi, the State Government was satisfied that Block Nos.159, 189, 194 as well as other agricultural lands of village Moti-Kumad, Taluka : Viramgam, District : Ahmedabad were likely to be needed for the public purpose of construction of Narmada Project Saurashtra Branch Canal. Therefore, notification under section 4 of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in the Government Gazette on September 29, 1991. After following due procedure, declaration under section 6 of the Act was made, which was also published in Government Gazette on January 9, 1992. Thereafter notices were issued to the claimants and the Land Acquisition Officer by his award dated October 29, 1993 had offered compensation to the claimants at the rate of RS. 1.12 ps. per sq.mt. Thereupon the claimants had sought references which were made to the District Court, Ahmedabad (Rural) and which were registered as Land Acquisition Cases No. 2024/96 to 2026/96. The claimants had averred that village Moti Kumad had all facilities, such as, light, water, telephone, road etc. and, therefore, they should be awarded compensation at the rate of RS. 20/- per sq.mt. The averments made by the claimants in the claim applications were denied by the Special Land Acquisition Officer, Ahmedabad in written

statement Exh.9. The appellant no.2 had also filed written statement at Exh.10 and claimed that as compensation determined by the Land Acquisition Officer was just and proper, the reference applications should be rejected. On behalf of the claimants, a purshis at Exh.13 was filed for consolidating all the Land Acquisition Cases with Land Acquisition Case No.2024/96. That application was accepted by the reference court and Land Acquisition Case No.2024/96 was treated as main case in which the parties had led common evidence.

3. Upon rival assertions of the parties, necessary issues for determination were framed by the reference court at Exh.11. On behalf of the claimants, witness Kamaji Lakhaji Thakor was examined at Exh.19. He deposed before the Court that as the acquired lands had irrigation facility and were level, the claimants were entitled to compensation at the rate of Rs.20/- per sq.mt. The witness also informed the Court that the claimants were taking crops of wheat, cumin seeds, cotton etc. and as the claimants were earning Rs. 9000/as net agricultural income per year per Bigha, they were entitled to enhanced compensation as claimed in the reference applications. The witness produced previous award of the reference court at Exh.17 relating to acquisition of land bearing Block No.157 of this very village and claimed that the claimants were entitled to compensation on the basis of said previous award. It is relevant to notice that the present appellants had not led either documentary or oral evidence. On consideration of the evidence led by the claimants, the reference court was of the opinion that the previous award of the reference court produced at Exh.17 which was in relation to agricultural land of this very village, was comparable as well as relevant and should be relied upon for the purpose of determining market value of the lands which were subject matter of the references. Placing reliance on the said previous award, the reference court has held that the claimants are entitled to additional compensation at the rate of Rs. 9/- per sq.mt. by the impugned common award, giving rise to the present appeals.

4. Ms. Nandini Joshi, learned counsel for the appellants submitted that previous award of the reference court was neither comparable nor relevant and should not have been made basis for awarding compensation to the claimants in these cases.

5. Mr. Nitin M. Amin, learned counsel for the claimants asserted that the previous award relating to

agricultural land of this very village which was also acquired pursuant to publication of same notification under section 4(1) of the Act on August 29, 1991 is rightly made basis for determining compensation payable to the claimants in these cases and, therefore, the appeals should be rejected.

6. We have heard the learned counsel for the parties and taken into consideration paper book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence led by the parties. It is not in dispute that agricultural land of village Moti Kumad i.e. Block No.157 was acquired pursuant to publication of common notification under section 4(1) of the Act on August 29, 1991. It is also not in dispute that Special Land Acquisition Officer by his common award dated October 29, 1993 had offered compensation to the claimants at the rate of Rs. 1.12 ps. per sq.mt. Hasmukhbhai Balaji Patel, who was owner of Block No.157 had sought reference which was made by the Special Land Acquisition Officer to the District Court, Ahmedabad (Rural) at Mirzapur and which was registered as Land Acquisition Case No.1850/96. Therein the reference court by judgment and award dated June 14, 1999 has held that the claimant Hasmukhbhai is entitled to additional compensation at the rate of Rs. 9/- per sq.mt. Though the Land Acquisition Officer had accepted the demand made by the respondents to refer their cases also to the reference court and though the said request was accepted, these Land Acquisition Cases could not be heard by the reference court along with Land Acquisition Case No.1850/90. In view of the deposition of witness Kamaji Lakhaji Thakor and in view of absence of any evidence from the appellants, we are of the opinion that the reference court was justified in placing reliance on the previous award of the reference court which relates to agricultural land of this very village and which was acquired pursuant to publication of common notification under section 4(1) of the Act on August 29, 1992. Exh.18 indicates that the State Government has acquiesced in the previous award of the reference court, which is produced on the record of the case at Exh.17. Thus, the previous award has become final between the parties. It is well settled that the previous award of the reference court and which has become final, can be relied upon for the purpose of assessing market value of the lands acquired by the same notification from the same village. If the present references had been decided along with Land Acquisition Case No.1850/96, the claimants would have been awarded additional compensation at the rate of Rs. 9/- per sq.mt. For all these reasons, we are of the view

that the appeals cannot be accepted and are liable to be dismissed.

For the foregoing reasons, the appeals fail and are dismissed, with no order as to costs.

(J.M.Panchal,J.)

(M.C.Patel,J.)

(patel)